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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,584	03/29/2001	James F. Riordan	CH920000010US1	3499
48813 7590 01/30/2008 LAW OFFICE OF IDO TUCHMAN (YOR) 82-70 BEVERLY ROAD KEW GARDENS, NY 11415			EXAMINER PYZOCHA, MICHAEL J	
			ART UNIT 2137	PAPER NUMBER
			NOTIFICATION DATE 01/30/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ITUCHMAN@TUCHMANLAW.COM  
ido\_tuchman@yahoo.com  
idotuchman@gmail.com

## Office Action Summary

Application No.

09/821,584

Applicant(s)

RIORDAN ET AL.

Examiner

Michael Pyzocha

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2008.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 30-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 30-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

1. Claims 30-38 are pending.
2. After Final response filed 01/10/2008 has been received and fully considered. Prosecution is hereby reopened.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 30-38 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claims 30-38 relate to a system however this system fails to positively recite any actual hardware to constitute a system. Additionally the specification (see abstract) states the system can be software and/or hardware, therefore the system can be merely software. The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the mean of 35 USC §101. They are clearly not a series of steps or acts to be a process not are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material per se.

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***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 30-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Boroughs et al.* (US 6834350) in view of *Fujiyama et al.* (US 6971026).

As per claims 30 and 33, *Boroughs et al.* discloses a security system comprising: an activation token identifying system characteristics and specifying a threat and at least one preset activation measure, wherein a system characteristic is one of the group of a hardware system, a service, a configuration of a service, a service execution platform, and a service session (see column 2 line 62 through column 3 line 34); a first system configured to at least review security and vulnerability information from information publishers and to provide the activation token based on filtered security and vulnerability information (see column 2 line 59 through column 3 line 10); and a second system configured to determine whether the activation token is relevant by checking if actual characteristics at the second system correspond to the system characteristics identified by the activation token, the second system further configured to transform the activation token into at least one activation measure if the activation token is

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considered relevant by the second system the activation measure configured to modify services executing at the second system (see column 3 lines 35-67 and column 4 lines 1-5) wherein the first system is further configured to automatically filter the security and vulnerability information relevant to the system characteristics identified by the activation token (see column 2 line 59 through column 3 line 10 and Figure 17).

Boroughs et al. fail to explicitly disclose including a threat level within the activation token.

However, Fujiyama et al. teaches including a trust level with an activation token (see figures 2-5 and column 7 line 54 through column 8 line 55).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to include trust levels with the activation tokens of Boroughs et al.

Motivation to do so would have been to distinguish between the types of threats (see figures 2-5 and column 7 line 54 through column 8 line 55).

As per claim 31, the modified Boroughs et al. and Fujiyama et al. system discloses cryptographic means configured to verify at the second system that the first system is a trusted service (see Boroughs et al. column 3 lines 55-67).

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As per claim 32, the modified Boroughs et al. and Fujiyama et al. system discloses reporting means configured to report to a system administrator of the second system any activation measure taken by the second system (see Boroughs et al. column 2 lines 59-67).

As per claim 34, the modified Boroughs et al. and Fujiyama et al. system discloses a list of trusted service providers from whom activation tokens are accepted by the second system (see Fujiyama et al. column 8 lines 13-39).

As per claims 35 and 36, the modified Boroughs et al. and Fujiyama et al. system discloses a preset activation measure is one of shutting down a service affected by the specified threat level and reconfiguration of the service (see Fujiyama et al. Figure 3 column 202).

As per claim 38, the modified Boroughs et al. and Fujiyama et al. system fails to explicitly disclose that the at least one preset activation measure is alerting a system administrator.

However, Official Notice is taken that at the time of the invention it would have been obvious to alert a system administrator.

Motivation to do so would have been so that the system administrator knows to take action.

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6. Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified Boroughs et al. and Fujiyama et al. system as applied to claim 30 above, and further in view of Pearson (US 6990591).

As per claim 37, the modified Boroughs et al. and Fujiyama et al. system fails to explicitly disclose installing a patch as an activation measure.

However, Pearson teaches installing a patch (see column 13 lines 4-15).

At the time of the invention it would have been obvious to a person of ordinary skill in the art to install a patch as one of the activation measures of the modified Boroughs et al. and Fujiyama et al. system.

Motivation to do so would have been to update the attack signature list (see Pearson column 13 lines 4-15)..

### ***Response to Arguments***

7. Applicant's arguments, filed 01/10/2008, with respect to the rejection(s) of claim(s) 30-38 under 35 USC 103(a) over the modified Boroughs et al. and Riordan et al. system have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new

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ground(s) of rejection is made in view of the modified Boroughs et al. and Fujiyama et al. system.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Pyzocha whose telephone number is (571) 272-3875. The examiner can normally be reached on 7:00am - 4:30pm first Fridays of the bi-week off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Emmanuel Moise can be reached on (571) 272-3865. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

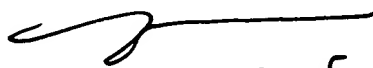


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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJP

NASSER MOAZZAMI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

  
11/23/08